315-815

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Office - Supreme Court
FILED
MAR 5 1942

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Denied

No. 835

J. A. ZACHARIASSEN & CO.,

Petitioners,

vs.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

PETITIONERS' REPLY BRIEF.

JOHN G. POOLE,
Counsel for Petitioners.

JAMES C. WEBSTER,
ALFRED J. L'HEUREUX,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

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J. A. ZACHARIASSEN & CO.,

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THE UNITED STATES.

PETITIONERS' REPLY BRIEF.

A.

The statement on page 8 of the government's brief that the detention of the ALBYN consisted solely of the refusal to permit the vessel to export ship's stores and supplies is not accurate. It is true that the refusal of a bunker license authorizing export of those stores and supplies prevented the ALBYN from obtaining a clearance and sailing, because Section 3 of the Espionage Act required the Collector to refuse clearance unless a license was presented. But the offer of the Shipping Board to cause the ALBYN to fulfill her charter with Vacuum Oil Company if she were chartered to it (R. 127)—which proposition, if fulfilled, would have required the export of the same stores and supplies—is conclusive evidence that the refusal to grant a bunker license was not for the purpose of preventing the export of those articles, but was for the purpose of detaining the ship. The refusal of the bunker license was merely the means used for detaining the ship.

B.

The statement on page 3 of the government's brief, as well as on other pages thereof, that the propriety of the Board's conduct in refusing a bunker license for ship's stores and supplies cannot be judicially re-examined, involves questions of both local and International Law. It involves the question whether the action of the Board was within or beyond the provisions of the local statute. It involves the question whether, even though within the provisions of the local statute, the action was in accord with, or contrary to, the rules of International Law, because this Court has consistently held that where local and International Law conflict, the former must give way. These questions cannot be fully or properly argued within the limits of a brief on a petition for a Writ of Certiorari. In such a brief we feel restricted to pointing out that the decisions cited in our main brief, laying down rules of both local and International Law, hold that the detention of a vessel in port, upon unfounded suspicions, either in war or peace time, is unlawful, and burdens the detaining government with the responsibility of paying just compensation therefor.

C.

With commendable frankness, counsel for the government in the footnote on page 10 of their brief, concedes that there is no direct evidence in the record to support the finding of the Court below that one of the reasons for the detention of the ALBYN was the probability that the vessel would proceed through a proscribed danger zone. This concession relieves the Court of the burden of examining the facts in the record in considering the 3rd question posed in our petition.

D.

The interpretation of the Executive Order by which the President vested the War Trade Board with authority to

administer the Espionage Act as set forth on pages 11 and 12 of the government's brief is unwarranted. The terms of the Order are clear. Paragraph VIII, the pertinent part thereof (R. 183), reads as follows:

> "The said War Trade Board is hereby authorized and empowered to take all such measures as may be necessary or expedient to administer the powers hereby conferred. And I hereby vest in the War Trade Board the power conferred upon the President by Section 5(a) to make such rules and regulations, not inconsistent with law, as may be necessary and proper for the exercise of the powers conferred upon said board."

That is to say, the acts of the War Trade Board must be "not inconsistent with law." Not inconsistent with either local or International Law.

In refusing a bunker license upon mere suspicion (uninvestigated for over three months and then proven unfounded within one week of the day investigation was ordered), and thus detaining for four months, a vessel whose cargo was licensed by it for export under a charter approved by proper government authorities, the War Trade Board clearly violated both local and International Law and therefore violated the Executive Order.

Respectfully submitted,

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